



All about  
**Bankruptcy  
Mediation**

*Mediation  
Matters*

# All about Bankruptcy Mediation

Recent amendments to the *Bankruptcy and Insolvency Act* have led to changes in the consumer bankruptcy process, changes that could be very helpful to you as a bankrupt or a creditor.

Beginning in the Spring of 1998, you will have the right to ask for **mediation** to settle certain kinds of disputes related to a bankruptcy.

This brochure provides basic information on the mediation process. It does not provide detailed legal advice. For complete legal information related to mediation and bankruptcy, you may contact:

- a trustee in bankruptcy
- the Office of the Superintendent of Bankruptcy in your area
- a lawyer who specializes in bankruptcy.

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### ***What is mediation?***

Mediation is a way of resolving conflict between two or more people. The parties involved in the disagreement agree to work with an independent person called a “mediator” who helps them settle their dispute.

### ***Why was mediation introduced into the consumer bankruptcy process?***

The mediation process will be more flexible and less costly than a formal court decision. It will allow the people who are affected by the bankruptcy to be directly involved in deciding how their disagreement will be settled.

### ***Who is the mediator?***

The mediator may be an employee from one of the Superintendent of Bankruptcy’s Division Offices. It may also be any other person with training and experience in mediation who is approved by the Superintendent.

### ***What does the mediator do?***

The mediator’s role is to help the parties communicate. To reach an agreement, all parties must understand what issues are in dispute and what each party wants or needs. The mediator will help the parties explain their point of view and discuss ways to settle the disagreement. The mediator does not decide what the settlement will be. The parties decide that together.

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The mediator explains the mediation process including the procedures for additional meetings (rescheduling and adjournment). The mediator is not allowed to act as a legal counsel to any party involved in the mediation.

### ***What is the trustee's role in the mediation?***

The trustee's role is to provide guidance to people who are affected by the bankruptcy.

### ***Who may attend the mediation session?***

The bankrupt, the trustee and the mediator will be present. In addition, the following people may attend:

- any creditor who has requested mediation
- the bankrupt's spouse or a friend
- legal counsel for any of the parties.

The parties present at the mediation session should have signing authority and bring all pertinent documentation.

### ***When can mediation be used to resolve disputes?***

Mediation is available to resolve two kinds of disputes:

1. Disagreements over the amount of money the bankrupt will pay to creditors (called surplus income).
2. Disagreements regarding the conditions for a bankrupt to be declared free from the status of being bankrupt (called a discharge from bankruptcy).

## ***1. Surplus Income Mediation***

At the beginning of the bankruptcy, the trustee determines the amount, if any, that the bankrupt will be required to pay to creditors. This amount is called surplus income. The trustee sets the amount by taking into account:

- the standards issued by the Superintendent of Bankruptcy, and
- the bankrupt's personal and family situation.

*Who can request surplus income mediation?*

- If the **bankrupt** does not agree with the amount of surplus income to be paid, the trustee must request mediation.
- If any of the **creditors** do not agree with the amount of surplus income to be paid, they may submit a written request to the trustee asking for mediation.

*Who will be considered for surplus income mediation?*

- Surplus income mediation is available to a first-time bankrupt or multiple-time bankrupt.

## ***2. Discharge Mediation***

Towards the end of a bankruptcy, the trustee must recommend whether or not the bankrupt should be declared free from the state of being bankrupt (called a discharge from bankruptcy). The conditions of the discharge, if any, will be based on the bankrupt's conduct and ability to make payments.

### *Who can request discharge mediation?*

- The **bankrupt** may request mediation if he or she disagrees with the conditions that the trustee has recommended for discharge.
- The **trustee** must request mediation if he or she opposes the bankrupt's discharge because:
  - the bankrupt did not pay the agreed amount of surplus income
  - the bankrupt filed for bankruptcy instead of proposing a viable repayment plan (called a proposal).
- The **creditors** may request mediation if they oppose the bankrupt's discharge because:
  - the bankrupt did not pay the agreed amount of surplus income
  - the bankrupt filed for bankruptcy instead of proposing a viable repayment plan (called a proposal).

The trustee must request mediation when creditors oppose the bankrupt's discharge.

### *Who will be considered for discharge mediation?*

- Discharge mediation is only available for a first-time bankrupt.

### *What happens if the parties agree?*

The mediation is successful when all the parties will reach an agreement. A "mediation settlement agreement" will be signed by all parties. The bankrupt will be required to comply with all provisions of the agreement.

## ***What happens if the parties cannot agree?***

### ***1. Surplus income mediation***

If the parties do not reach an agreement over surplus income, the trustee may apply to court to decide the matter. However, the trustee must apply to court, if he or she is requested to do so by a creditor or by officials from the Office of the Superintendent of Bankruptcy.

### ***2. Discharge mediation***

If the parties do not reach an agreement over conditions for the bankrupt's discharge, the trustee must apply to court as soon as possible to have the matter decided.

## ***Questions? Need more information?***

Call your trustee in bankruptcy or the Office of the Superintendent of Bankruptcy in your area.

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